IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.1975 OF 1991
WITH
WRIT PETITION NO.1963 OF 1991

WRIT PETITION NO.1975 OF 1991

1. Vithal Trimbak Jadhav.)
deceased by his legal)
representatives:)

a) Chandrakant Vithal Jadhav,)
age 38)

b) Mahendra Vithal Jadhav,)
age 28,)

c) Narendra Vithal Jadhav,)
age 23,)

d) Gangubai Vithal Jadhav,)
age 53,)
All residing at 322,)
Pardeshi Wada, Nashik.)

e) Mangal Khanderao Patil,)
age 38,)
residing at Satpur,)
Dist : Nashik.)

f) Sunita Ashok Kute, age 33,)
r/o Aurangabad.).. Petitioners
(Org.defendants-
tenants)

Versus

Smt. Anandibai Shankarsingh Pardeshi)
age 63, residing at House No.322,)
Pardeshi Wada, Nashik 422 001.).. Respondents
(Org.plaintiffs-
landlady)

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S/Shri C.R.Dalvi with K.Y.Mandlik, Advocates for the petitioners.

Shri P.N.Joshi, Advocate for the respondents.
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WRIT PETITION NO.1963 OF 1991

1. Vithal Trimbak Jadhav. deceased by his legal representatives:

a) Chandrakant Vithal Jadhav, age 38

b) Mahendra Vithal Jadhav, age 28,

c) Narendra Vithal Jadhav, age 23,

d) Gangubai Vithal Jadhav, age 53, All residing at 322, Pardeshi Wada, Nashik.

e) Mangal Khanderao Patil, age 38, residing at Satpur, District : Nashik.

f) Sunita Ashok Kute, age 33, r/o Aurangabad.

.. Petitioners (Org.defendants-tenants)

Versus

Smt. Anandibai Shankarsingh Pardeshi) age 63, residing at House No.322, Pardeshi Wada, Nashik 422 001.

.. Respondents (Org.plaintiffs-landlady)

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S/Shri C.R.Dalvi with K.Y.Mandlik, Advocates for the petitioners.

Shri P.N.Joshi, Advocate for the respondents.
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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 15TH SEPTEMBER, 2006

ORAL JUDGMENT:

1. Since common questions of law and facts arise in both these petitions, they were heard together and are being disposed of by this common judgment.

2. Heard. The petitioners challenge the decree of eviction as well as the order of fixation of standard rent in these two petitions.

3. The notice demanding arrears of rent from 1st July, 1978 at the rate of Rs.14/- per month came to be issued on 19th January, 1981 by the respondents and it was served upon the predecessor of the petitioners on 21st January, 1981. Immediately thereafter on 30th January, 1981, the tenant filed an application for fixation of standard rent in respect of the suit premises and the competent authority by an order dated 9th February, 1981 fixed the interim standard rent at the rate of Rs.9.50 per month. The tenant deposited the amount of Rs.350/- on 10th February, 1981 towards the rent in terms of the order for fixation of the interim standard rent dated 9th February, 1991. The said amount of rent related to the period from 1st

July, 1978 to 30th January, 1981. Further, the amount of Rs.200/- was deposited on 19th August, 1981 followed by Rs.100/- on 12th November, 1982. The suit for eviction on various grounds came to be filed on 3rd August, 1983. Ultimately, the suit was decreed on the sole ground of default in payment of rent. The matter was carried in appeal without any success. Simultaneously, the standard rent was fixed at Rs.14/- p.m. which was also sought to be challenged without any success. Hence, the present petitions.

4. The sole ground on which the decree of eviction is sought to be challenged is that, on the date of filing of the suit for eviction, the petitioners were not in arrears of rent considering the amounts deposited by the petitioners in terms of the order dated 9th February, 1981 fixing the interim standard rent, and therefore, merely because there was delay in deposit of the rent after filing of the suit, the court could not have ordered eviction of the petitioners in the suit which was filed without any cause of action. As regards the standard rent at the rate of Rs.14/- per month is concerned, it is the contention of the petitioners that the same has been fixed without any basis. On the other hand, it is the contention on behalf of the respondents that merely

because the tenant had deposited the rent in terms of the order dated 9th February, 1981 fixing the interim standard rent, that by itself is not sufficient and considering the provisions of Section 12(3)(b), the tenant is required to continue to deposit the rent regularly during the pendency of the suit and any failure in that regard would warrant eviction of the tenant from the suit premises in term of the said provision of law.

5. Reliance is sought to be placed in the decision of the learned Single Judge in the matter of **Indubai Sidram Mundewadi & Ors. v. Sidramappa Baslingappa Kalyanshetti, since deceased by his heirs & LRs. & Ors.,** reported in 1998(1) Mh.L.J. 282 on behalf of the respondents.

6. The facts on record undisputedly disclose that till the date of filing of the suit i.e. on 3rd August, 1983, the petitioners had deposited the rent in terms of the order dated 9th February, 1981 whereby the interim standard rent was fixed at Rs.9.50 per month. Taking into consideration the fact that the petitioners had deposited the sum of Rs.350/- on 10th February, 1981, Rs.200/- on 19th August, 1981 and Rs.100/- on 12th November, 1982, it is apparent that

the petitioners had deposited the rent at the rate of Rs.9.50 per month well in advance and in terms of the compliance of the order dated 9th February, 1981. There was undoubtedly no default in that regard on the part of the petitioners. However, it is also clearly established from the record and the clear concurrent findings arrived at in that regard by both the courts below that after filing the suit, the petitioners had deposited the rent for the first time on 1st October, 1985 to the extent of Rs.250/-. Considering the earlier amount which was deposited at the rate of Rs.9.50 p.m. till 12th November, 1982, the payment which was done was sufficient for the period upto July, 1983 and on 1st August, 1983 there was excess amount of Rs.70.50ps. to the credit of the account of the respondents consequent to the deposit of the said amounts by the petitioners. The said amount of Rs.70.50 ps. was undoubtedly sufficient to govern at least 7 months i.e. from August, 1983 to March, 1984. In other words, upto 31st March, 1984, the amount which was already deposited was only to the extent of Rs.9.50ps. and thereafter no amount towards payment of arrears of rent was deposited by the petitioners till 1st October, 1985. In other words, from April, 1984 till September, 1985, the petitioners failed to pay or deposit the monthly rent in terms of the order

dated 9th February, 1981. Considering the same and in the absence of any satisfactory explanation in that regard, both the Courts have held that the petitioners are bound to suffer a decree of eviction on account of failure to avail the opportunity available in terms of Section 12(3)(b) of the Bombay Rents, Hotel and Lodging Rates Control Act, 1947. As far as the concurrent finding on this aspect is concerned, the petitioners have not been able to assail the same nor have been able to satisfy that the said finding is either perverse or not borne out from the record. On the contrary, assessment of the evidence on record clearly discloses that the said finding is on the basis of the materials on record and cannot be found fault with.

7. The contention on behalf of the petitioners, however, is that the suit itself was not maintainable as on the day when the suit was filed, the petitioners were not in arrears of rent and that therefore there was no cause of action. Firstly that no such objection was raised by the petitioners either before the Trial Court or before the Lower Appellate Court. This ground is sought to be raised for the first time in these writ petitions. Undoubtedly, this cannot be said to be a pure question of law. It is a mixed

question of law and facts. Whether a person is in arrears of rent or not, is not a pure question of law. It may depend upon the facts of the case. Undoubtedly, if the fact that the person is not in arrears of rent is not disputed, the only point thereafter will remain to be considered is whether, on the basis of the undisputed facts, the point which is sought to be raised is to be answered in favour of that person or not. However, it is also to be noted that in a case where there is a clear provision of law regarding the right to avail benefits under Section 12(3)(b) of the said Bombay Rent Act and it provides that the tenant who faces the eviction proceedings has to be alert in compliance with his obligation to pay rent regularly, and therefore, has to pay rent regularly to the landlady during the pendency of the suit for eviction, and knowing well about the availability of such benefits to be availed, he had chosen to contest the eviction proceedings on merits and merely because he failed in the process, he seeks to raise such issue only after the conclusion of the appellate proceedings and when the matter has reached at the stage of the proceedings under Article 227 of the Constitution of India, it will be totally unfair to non-suit the respondents on the basis of such belated objection raised by the petitioners who merely

are trying to overcome their failure in the proceedings which they had chosen to contest on merits. Once the tenant has chosen to contest the case on merits without availing the right which he could have when the suit itself was filed, and having compelled the respondents to proceed with the matter by leading evidence in the matter and also further subjecting to the decree in the appellate proceedings and only after failure at both the stages, the petitioners cannot be allowed to raise this point in 227 proceedings.

8. Even otherwise, once the statute provides that in a proceeding which is initiated for eviction of a tenant, the tenant has to pay rent regularly and continue to pay the rent even during the pendency of the proceedings. Failure in that regard can be taken into consideration while deciding the issue regarding default in payment of rent and it can give rise to the eviction of the tenant. When the facts in such proceedings disclose failure on the part of the tenant to deposit the rent regularly during the pendency of the suit, he may not be then heard to contend about non-maintainability of the suit. It will virtually amount to allowing the tenant to defeat the right which has accrued to the landlady under the statutory

provision on account of failure on the part of the tenant to comply with its statutory obligation. It is well settled that the rent legislation is not a beneficial legislation merely for the benefits of a tenant, but it is equally beneficial for the landlady. As the tenant cannot be evicted without the cause specified under the statutory provision, it is equally responsibility of the tenant to comply with his obligations which are statutorily enumerated under the statute in order to avail protection from eviction. The protection from eviction to the tenant cannot be merely a one sided affair and to total prejudice to the landlady, but it has to be on the terms specified under the statute in relation to the obligation of a tenant particularly in relation to the payment of rent for his occupation of the premises and in the cases where the statutes provide for specific obligation of the tenant in that regard, they cannot be allowed to be flouted ignoring the corresponding right of the landlord.

9. For the reasons stated above, and considering the decision of the learned Single Judge in **Indubai Sidram Mundewadi's case (supra),** no case is made out for interference in the impugned order of eviction.

10. As regards the fixation of standard rent is concerned, both the Courts have arrived at the finding that the standard rent has to be at the rate of Rs.14/- p.m. The Courts have observed that undisputedly the rent receipts for the year 1959 disclosed the payment of rent at the rate of Rs.9.50 p.m. The standard rent was requested to be fixed in the year 1981. The Courts below have also taken into consideration the area as well as the various facilities available to the premises and taking into consideration all those materials on record in regard to the premises, the standard rent has been fixed at the rate of Rs.14/- per month. In my considered opinion, I do not find any illegality committed by the Courts below in fixation of standard rent at the rate of Rs.14/- per month. There is also no case made out for interference in the impugned order regarding fixation of standard rent.

11. For the reasons stated above, therefore, the petitions fail and are hereby dismissed. The petitioners shall deliver vacant and peaceful possession to the respondents on or before 31st December, 2006. Meanwhile, the petitioners shall not induct any third party nor shall create any interest in respect of the suit premises. Rule discharged. No

order as to costs.

(R.M.S.KHANDEPARKAR, J)